UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

July 21, 2003 at 9:00 a.m.

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1. 02-33000-A-7 DIGITAL CRAYON, INC. HEARING - MOTION FOR ORDER APPROVING COMPROMISE OF CONTROVERSY
HSM #1 6-20-03 [106]

Tentative Ruling: The motion will be denied without prejudice.

On November 22, 2002, Digital Crayon filed a case under chapter 11. The case was converted to a case under chapter 7 on February 11, 2003. Prior to the filing of this petition, a legal malpractice action was filed and pending in Sacramento Superior Court, in which Bradley E. Getter, a shareholder of Digital Crayon, Inc., and debtor in case No. 02-33003, and Sherese Marie Borge, a shareholder of Digital Crayon, Inc., and debtor in case no. 02-33003, were the named plaintiffs, and their former attorney, whose name is not to be disclosed pursuant to a confidentiality agreement, was the named defendant. Digital Crayon was not a named party to this action. Before this petition was filed, a settlement was reached in the state court action.

The trustee in the Digital Crayon case, the individual debtors, their respective trustee, and the attorney representing the plaintiffs in the malpractice action, all assert or may potentially assert either an interest in or a claim against the proceeds of the settlement funds, which amount to $100,000.

With the possible exception of the two chapter 7 trustees in the individual bankruptcy cases, these parties have agreed to settle their respective claims concerning the settlement proceeds. They propose to divide the proceeds, one-third to Waltz, one-third to Getter and Borge, to be divided between them, and one-third to the Digital Crayon estate. All distributions to Getter, Borge, and Waltz will be made through the Digital Crayon estate as though they had filed valid proofs of claim. The trustee here seeks approval of this compromise among the parties with respect to these funds.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610 (9th Cir. 1988).

The complication here is that there is no indication that the chapter 7 trustees administering the estates of the two individual debtors have joined in the compromise. Therefore, any approval of the compromise is premature until

the trustees in the individual cases join in the settlement or until those trustees abandon of any interest in the controversy to the individual debtors.

2. 02-33003-A-7 BRADLEY GETTER — HEARING - MOTION FOR ORDER APPROVING COMPROMISE OF CONTROVERSY 6-20-03 [88]
HSM #1

Tentative Ruling: The motion will be denied without prejudice.

On November 22, 2002, Digital Crayon filed a case under chapter 11. The case was converted to a case under chapter 7 on February 11, 2003. Prior to the filing of this petition, a legal malpractice action was filed and pending in Sacramento Superior Court, in which Bradley E. Getter, a shareholder of Digital Crayon, Inc., and debtor in case No. 02-33003, and Sherese Marie Borge, a shareholder of Digital Crayon, Inc., and debtor in case no. 02-33003, were the named plaintiffs, and their former attorney, whose name is not to be disclosed pursuant to a confidentiality agreement, was the named defendant. Digital Crayon was not a named party to this action. Before this petition was filed, a settlement was reached in the state court action.

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The complication here is that there is no indication that the chapter 7 trustees administering the estates of the two individual debtors have joined in the compromise. Therefore, any approval of the compromise is premature until the trustees in the individual cases join in the settlement or until those trustees abandon of any interest in the controversy to the individual debtors.

3. 02-33004-A-7 SHERESE BORGE — HEARING - MOTION FOR ORDER APPROVING COMPROMISE OF CONTROVERSY 6-20-03 [70]
HSM #1

Tentative Ruling: The motion will be denied without prejudice.

On November 22, 2002, Digital Crayon filed a case under chapter 11. The case was converted to a case under chapter 7 on February 11, 2003. Prior to the filing of this petition, a legal malpractice action was filed and pending in Sacramento Superior Court, in which Bradley E. Getter, a shareholder of Digital Crayon, Inc., and debtor in case No. 02-33003, and Sherese Marie Borge, a shareholder of Digital Crayon, Inc., and debtor in case no. 02-33003, were the named plaintiffs, and their former attorney, whose name is not to be disclosed pursuant to a confidentiality agreement, was the named defendant. Digital Crayon was not a named party to this action. Before this petition was filed, a settlement was reached in the state court action.

The trustee in the Digital Crayon case, the individual debtors, their respective trustee, and the attorney representing the plaintiffs in the malpractice action, all assert or may potentially assert either an interest in or a claim against the proceeds of the settlement funds, which amount to $100,000.

With the possible exception of the two chapter 7 trustees in the individual bankruptcy cases, these parties have agreed to settle their respective claims concerning the settlement proceeds. They propose to divide the proceeds, one-third to Waltz, one-third to Getter and Borge, to be divided between them, and one-third to the Digital Crayon estate. All distributions to Getter, Borge, and Waltz will be made through the Digital Crayon estate as though they had filed valid proofs of claim. The trustee here seeks approval of this compromise among the parties with respect to these funds.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610 (9th Cir. 1988).

The complication here is that there is no indication that the chapter 7 trustees administering the estates of the two individual debtors have joined in the compromise. Therefore, any approval of the compromise is premature until the trustees in the individual cases join in the settlement or until those trustees abandon of any interest in the controversy to the individual debtors.

4. 02-29243-A-7 SCOTT/CHRISTINE DURIGANO HEARING - OBJECTION TO PVT #2 CLAIM OF EXEMPTION 6-23-03 [62]

Tentative Ruling: The trustee objects to the debtors' exemption of the equity in their residence. The trustee alleges that the debtors have failed to be forthcoming about the value of their home, only revealing the true value of their home and claiming an exemption in that amount once the case had converted to chapter 7.

The debtors filed their first chapter 13 petition on September 15, 2000 (Case No. 00-30376-A-13L). In their schedules, they valued their residence at $62,000. Their plan was approved on December 19, 2000. The debtors paid monthly installments of $453 per month until March 2002, when they defaulted. The case was dismissed on motion of the chapter 13 trustee on August 2, 2002 without prejudice.

On August 20, 2002, the debtors filed a second chapter 13 petition. In their schedules, they again valued their residence at $62,000, listed a lien of slightly over $65,000, and claimed an exemption of $1.

However, the holder of the deed of trust on the debtors' home, Homeside Lending, filed a proof of claim on September 12, 2002 for $76,357.19. The proof of claim asserted that the unmatured principal owed to Homeside was $59,394.35 and that there were arrears of $16,962.84 which included over $10,000 in foreclosure and legal costs.

The debtors proposed to make plan payments of $1,099 per month. The plan, however, proved not to be feasible and was never approved. The debtors filed a motion to convert the case to chapter 7 which the court granted on March 4, 2003. On March 11 (before the first meeting with the chapter 7 trustee), the debtors filed amended schedules listing the residence as having a value of $149,538. They also amended Schedule C to claim an exemption of $75,000.

The trustee that argues that the debtors should be denied the exemption because of inaccuracies on both chapter 13 plans. First, the trustee notes that the debtors listed their house as being worth $62,000 when they filed the chapter 13 plan in 2000. They had paid $61,000 for the house on July 18, 1997. As both the trustee and the debtors admit, the Debtors failed to take into account the appreciation in value that was reflected in the prices of surrounding homes, which by 2002 were selling between $123,000 and $170,000. Second, the trustee intimates that the debtors knew they were understating the value of the house, based on their remarks at a § 341 meeting in August 2002. The debtors explained that their attorney had told them to use the purchase price of the house, although they acknowledged that the house next door had sold for $93,000. Third, the debtors have reported wide disparities in income on their chapter 13 and chapter 7 schedules.

Based on the amended schedules, the debtors' home has a value of $149,538. The trustee has presented no convincing evidence of a higher value. The amount owed on the first deed of trust totals approximately $76,357.19. Currently, the debtors have $73,180.81 in equity in their home. Pursuant to C.C.P. § 704.730(a)(2) the debtors may exempt up to $75,000.

There is no evidence that the subject property was worth more when this petition or the prior petition was filed. Consequently, if the debtors' initial schedules had given the same information as in the amended schedules now before the court, nothing would have changed. The debtors were, and are, entitled to exempt all of the equity in their home. Because they were entitled to exempt all of their equity, the chapter 13 trustee could not have compelled the debtors to, in effect, contribute any of this equity to the unsecured creditors through the chapter 13 plan. See 11 U.S.C. § 1325(a)(4). In other words, it does not appear that the inaccurate schedules prejudiced anyone in the prior case or in this case, whether under chapter 7 or chapter 13. At all times, the equity in the subject property was exempt.

The trustee bears the burden of proof in showing that the debtors should not be entitled to their exemption under C.C.P. § 704.730(a)(2). See Fed.R.Bankr.P. 4003(c). In order to satisfy this burden, the trustee must show that the debtors engaged in a bad faith effort to hide or misstate assets or acted prejudicially to the interest of creditors. Andermahr v. Barrus, 30 B.R. 532 (B.A.P. 9th Cir. 1983); Arnold v. Gill (In re Arnold), 252 B.R. 778 (B.A.P. 9th Cir. 2000).

The trustee has not proven that the debtors acted in bad faith or to the prejudice of their creditors or the estate. The trustee acknowledges that he is not certain why the debtors have misstated the value of their home. The only argument he advances is that the debtors hoped to avoid a motion under 11 U.S.C. § 707(b). However, this case began under chapter 13. The debtors attempted to confirm a plan that would have paid a minimum of 18% to their unsecured creditors. Section 707(b) by its terms is limited to chapter 7 cases. Once the case was converted to chapter 7, the debtors amended their schedules to reveal the present value of the property. Since all equity is exempt, and could have been exempted from day one of this case, it is difficult to understand how section 707(b) posed any danger to the debtors.

The trustee argues that the debtors were engaging in strategic behavior by filing first in chapter 13 and then moving into chapter 7. This seems to be contradicted by the fact that the debtors filed their first chapter 13 case in September 2000 (Case No. 00-30376-A-13L) and continued to make payments until their default in March 2002. Further, since the property was at all times fully exemptible in this case, the court does not understand what the trustee believes the debtors stood to gain by their alleged machinations. Moreover, the trustee's assessment that the debtors engaged in a scheme to manipulate and conceal the value of their home is contradicted by the debtors' lack of financial sophistication and the absence of any motive to engage is such conduct. The trustee has not presented evidence that the debtors were consciously engaging in some form of fraud and the court does not believe they did so.

The trustee requests that the court judicially estop the debtors from making assertions in the amended schedules that differ from earlier information given in their initial schedules. In order to grant this motion, the court must find evidence of all three factors as laid out in Hamilton v. State Farm Fire & Casualty, 270 F.3d 783 (9th Cir. 2001): 1) whether the party's later position was clearly inconsistent with its earlier position; 2) whether the party has succeeded in persuading a court to accept the party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled; and 3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

The trustee establishes the first requirement that the debtors gave inconsistent data with regard to their home value and their income. The trustee establishes the second point as well, since the court approved the debtors' chapter 13 using the earlier $62,000 valuation. But the trustee fails to show that debtors use of incorrect financial data negatively-impacted any creditors while the case was in chapter 13. Had the true facts been disclosed, the equity would still be exempt.

Finally, the trustee argues that the debtors should be equitably estopped from revaluing their house from $62,000 on the second chapter 13 schedule to $149,538 on their chapter 7 schedule. The party moving for equitable estoppel must establish that: "1) the party to be estopped must know the facts; 2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; 3) the latter must be ignorant of the true facts; and 4) he must rely on the conduct to his injury." In re Heritage Hotel Partnership I v. Valley Bank (In re Heritage Hotel Partnership), 160 B.R. 374, 378 (B.A.P. 9th Cir. 1993), citing United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978) *cert. denied* 442 U.S.

917, 61 L.Ed 2d 284 (1979).

The trustee has failed to establish, given the ability of the debtors to exempt all equity in their home at all times during this case, that any injury or harm has befallen anyone because of the debtors' initial undervaluation of the property in the schedules. If the debtors had disclosed the full value, their exemption amount would have increased commensurately. Further, the court finds no reason to believe that the debtors intended to deceive anyone regarding the value of their home. There is no basis for equitable estoppel.

The trustee's objection to the debtors' claim of home exemption will be overruled.

5. 03-24245-A-7 ROBERT/LAURIE HANSON — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
SMR #1 — 6-23-03 [28]
VISION GROUP HOLDINGS, ET AL., VS.

Tentative Ruling: Movant requests relief from the automatic stay as to the real property located at 6175 Via Madrid, Granite Bay, California. Movant requests relief pursuant to both 11 U.S.C. § 362(d)(1), claiming inadequate protection, on the basis that debtor has resided in the subject property for over a year without paying rent, and 11 U.S.C. § 362(d)(2), on the basis that debtor has no equity in the subject property, and the property is not necessary to a reorganization.

Movant alleges that it owns the property in question, and that debtor has no interest in the property. Movant states that it purchased the property from debtor on November 9, 2001, and leased the property back to the debtors pursuant to a lease that was to last until October 30, 2002, unless earlier terminated. The lease also contained an option to purchase, which expired on April 30, 2002. Debtor failed to pay rent beginning in June 2002, and on August 7, 2002, Movant served a three-day notice to pay rent or quit.

On August 28, 2002, debtors filed an action in Placer County Superior Court, case number SCV 13915, against Movant. Movant filed a cross-claim against debtors in the same action. On September 6, 2002, Movant filed a complaint for unlawful detainer in Placer County Superior Court, case number MCV 14206.

On January 8, 2003 the court consolidated the two cases on its own motion, and ordered that Debtors must post a $50,000 bond by January 28, 2003, or Movant would be awarded a judgment for possession. Debtors failed to do so. On April 1, 2003, the court again ordered that Debtors post a $50,000 bond by April 7, 2003, and that Debtors pay rent to the Movant or a judgment for possession for Movant would issue without further notice or proceedings. Debtors failed to do so.

On April 11, 2003, an interlocutory judgment for possession was entered by the state court against Debtors and in favor of Movant. A writ of possession was issued on April 15, 2003. Debtors filed this petition on April 16, 2003.

Debtors oppose the motion for relief from stay, arguing that because the case was converted to a chapter 7 on June 3, 2003, the dynamics of the bankruptcy have changed, and the chapter 7 trustee should be given an opportunity to investigate the property rights of the estate.

The chapter 7 trustee likewise has filed opposition to the motion, requesting that the motion be denied without prejudice in order to give the chapter 7

trustee more time to investigate the claims, and determine whether he should join in debtors' adversary proceeding, or perhaps file his own adversary proceeding.

Debtors have removed the state court proceeding referenced above to the bankruptcy court. Removal of the proceeding notwithstanding, before the commencement of this bankruptcy the state court had already issued a judgment for possession and writ of possession in favor of Movant. Therefore, the court will grant relief from automatic stay to permit Movant to enforce the writ of possession entered by the state court. The motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1). Title to the subject property is in the name of Movant and Movant is not being compensated for the Debtors use of that property. Movant's interest in the property is not adequately protected.

If Debtors or the trustee wish to pursue their claims they must do so in the context of the state court litigation/adversary proceeding rather than this motion. It is inappropriate for the court to consider in connection with this motion the claims and defenses being asserted by Debtors in their litigation with Movant. In the words of the Ninth Circuit: "Stay litigation is limited to issues of the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization . . . The validity of the claim or contract underlying the claim is not litigated during the hearing . . . Thus, the state law governing contractual relationships is not considered in stay litigation." Johnson v. Righetti (In re Johnson), 756 F.2d 738, 740 (9th Cir. 1985), *cert. denied*, 474 U.S. 828 (1985).

6. 03-25351-A-11 FORSEES, INC.
RCI #4

HEARING - MOTION FOR AUTHORIZATION TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS
6-17-03 [20]

Tentative Ruling: The debtor seeks authorization pursuant to 11 U.S.C. § 363 to sell debtor's six remaining beauty supply shops in and around the Sacramento area.

Prior to the commencement of the case, the debtor entered into purchase agreements for the sale of the six retail locations to third-party purchasers, and opened escrows for the sales. The debtor turned over possession of the six locations effective February 1, 2003, and the buyers have been operating the retail stores since that date. The escrows have not closed.

The stores and sales in question are:

1) The sale of all stock in trade, furniture, fixtures, equipment and goodwill of Forsees Beauty Center, 1026 Florin Road, Sacramento, California to Gregory J. Rupert and Francie G. Rupert for the sale price of $38,739.62, which includes a purchase price of $8,400, plus $30,339.62 for inventory. The terms of the purchase are a total cash payment of $8,400 and a promissory note for $30,339.62, which will be assigned to CPK Trust, the secured creditor.

2) The sale of all stock in trade, furniture, fixtures, equipment and goodwill of Forsees Beauty Center, 2530 Watt Avenue, Sacramento, California to Bernice Alegria-Espinoza and Carlos Espinoza for the sale price of $28,393.18, which includes a purchase price of $8,400, plus $19,993.18 for inventory. The terms of the purchase are a total cash payment of $8,400 and a promissory note for $19,993.18, which will be assigned to CPK Trust, the secured creditor.

3) The sale of all stock in trade, furniture, fixtures, equipment and goodwill of Forsees Beauty Center, 8849 Greenback Lane, Orangevale, California to Micheline Bingham for the sale price of $12,928.31, which includes a purchase price of $4,000, plus $10,928.31 for inventory. The terms of the purchase are cash through escrow.

4-6) The sale of all stock in trade, furniture, fixtures, equipment and goodwill of 3 Forsees Beauty Centers, located at 1921 Douglas Blvd, Roseville, California, 6726 Stanford Ranch Road, Roseville, California, and 9141 E. Stockton Blvd., Elk Grove, California, to Beauty Supplies Plus, a California general partnership, for the sale price of $77,174.52, which includes a purchase price of $30,000, plus $47,174.52 for inventory. The terms of the purchase are a total cash payment of $60,000 and a promissory note for $17,174.52, which will be assigned to CPK Trust, the secured creditor.

There exists a priority claim in favor of the California Board of Equalization in the approximate amount of $49,500, which will be paid from the proceeds of the sale directly from the close of escrow.

The total escrow proceeds of cash and promissory notes total $163,831.69, which is not enough to pay in full the priority Board of Equalization encumbrance and the CPK Trust secured obligation. The debtor nonetheless asserts that the sale is in the best interests of the estate because the purchase price for each location exceeds the liquidation value of the inventory, trade fixtures, and other property of the debtor.

Debtor states that the purchasers have consummated lease agreements or assumptions with the various landlords of the locations, which benefits the estate in that the estate is no longer obligated for lease payments since the transfer of the stores in February.

Creditor West Coast Beauty Supplies objects to the sales. West Coast obtained a pre-petition writ of attachment, within 90 days of the petition. West Coast acknowledges that this interest may be subject to avoidance, but asserts that it is likely to be the largest unsecured creditor, and therefore has a significant interest. The court notes that if West Coast's attachment was put in place less than 90 days prior to the filing of the petition the attachment is likely terminated as a matter of law. See Cal.Civ.Pro.Code § 493.030(b).

West Coast objects on the grounds that it believes the sales are collusive, that an independent appraisal is necessary, that there's a prospect of fraud, abuse or corruption, and that the sales should be delayed pending West Coast's motion for conversion to chapter 7.

West Coast's objection focuses largely on the specter of fraud or collusion, pointing out that the bulk of the sales proceeds are payable to secured creditor CPK Trust. The trustee of CPK Trust is Carol Kennedy, debtor's principal's sister. The perfected security interest in CPK Trust was established one year and three days before debtor filed bankruptcy, from which West Coast draws the conclusion that debtor manipulated the timing to avoid a claim of insider preference. The objection by West Coast is not accompanied by a declaration.

Creditor and non-residential lessor Price Legacy objects only to the extent that any party is relying on the existence of a non-residential lease of the premises at 6725 Stanford Ranch Rose, Roseville, California, as a material fact or condition of sale. The lease expired June 9, 2003, and under 11 U.S.C. §

362(b)(10) and § 541(b)(2), any interest of the debtor as a lessee under a lease of non-residential real property that is terminated at the expiration of the stated term during the pendency of the bankruptcy action is no longer property of the bankruptcy estate.

CPK Trust, the secured creditor, has submitted a statement in support of debtor's motion for authorization to sell property of the estate free and clear of liens. CPK Trust asserts that selling the stores as going concerns is a far better outcome for all concerned than a forced liquidation of the inventories and fixtures. CPK Trust points out that West Coast's objections are focused largely on the disposal of the proceeds, and that West Coast offers no evidence that the price is inadequate, or that the stores could be sold for a higher price. CPK Trust argues for a prompt sale, allowing parties to litigate over the proceeds as necessary.

The sales that debtor has arranged appear to be for a fair price. All parties seem to agree that this bankruptcy will be a liquidation, rather than a reorganization, and the inventory and fixtures will therefore need to be liquidated. Disagreement seems focused on the disposition of the proceeds, rather than the necessity of a sale. It will be to the estate's advantage to liquidate the inventory and fixtures now at an appropriate price, then allow the parties to litigate over the proceeds to the extent that they deem fit.

Provided that no sale is contingent upon the existence of a lease for 6725 Stanford Ranch Road, Roseville, California, the motion will be granted and the sale will be approved. The debtor will be granted permission to complete the sale free and clear of all liens and encumbrances, with the liens attaching to the proceeds. The priority tax claim may be paid directly from escrow, but the remainder of the proceeds must be deposited into a separate account until their appropriate distribution is determined. The court will not permit any distribution to CPK Trust, at this time. Parties in interest will have a reasonable period of time to first seek conversion, appointment of a trustee, etc., before the court will entertain a distribution.

7. 01-31877-A-7 QUENTIN/JOSIE YARANON — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
RMD #1 — 6-11-03 [60]
AMERICREDIT FIN. SVCS., INC., VS.

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to Local Bankruptcy Rules 4001-1 and 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file written opposition 14 days in advance of the hearing as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 52 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument.

The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to the applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorney's fees awarded herein. No other relief is awarded. The subject property, a 2000 Dodge Neon, has a value of $7,075 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of $10,954.36. There is no equity and there is no reorganization in prospect.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without

compensation and is depreciating in value.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

8. 98-39877-A-7 CARL/BETTY ALLEN — HEARING - MOTION TO AVOID JUDICIAL LIEN
HWW #5
VS. PACIFIC CREDIT EXCHANGE
7-7-03 [88]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the movant, this motion to avoid judicial lien is deemed brought pursuant to Local Bankruptcy Rules 4001-1 and 9014-1(f)(2) (effective Dec. 23, 2002). Consequently, no party in interest is required to file written opposition to the motion. If any party in interest appears at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

9. 02-25882-A-7 ELLA SMITH — HEARING - TRUSTEE'S MOTION FOR APPROVAL OF SALE OF ASSET
JWR #1
6-18-03 [118]

Tentative Ruling: The trustee requests approval for the sale of an estate asset pursuant to 11 U.S.C. § 363(b)(1), which provides that, after notice and a hearing, the trustee may use, sell or lease property of the estate other than in the course of business. The trustee wishes to sell an on-sale liquor license, which is property of the estate, to Jeffrey L. Graeff and George R. Somers for the sum of $12,000. The trustee values the liquor license at $12,000, and the proposed buyers have agreed to pay the closing costs of the sale.

The trustee believes that it is in the best interest of the estate to liquidate this asset, resulting in $12,000 to be disposed of through the estate. On this basis, the motion will be granted. Sale of the liquor license will be approved, pursuant to 11 U.S.C. § 363(b)(1) subject to any overbids as may be presented at the hearing.

10. 02-25882-A-7 ELLA SMITH — HEARING - UNITED STATES TRUSTEE'S MOTION FOR EXTENSION OF TIME FOR FILING A COMPLAINT OBJECTING TO DEBTOR'S DISCHARGE
UST #1
6-20-03 [121]

Tentative Ruling: The United States trustee requests an order extending the last date to file a complaint objecting to the debtor's discharge pursuant to 11 U.S.C. § 727. The trustee filed this motion to extend time before the original time to file an objection to discharge expired as required by Fed.R.Bankr.P. 4004.

The first meeting of creditors was held on November 6, 2002, but has been continued seven times with the last continued meeting scheduled for July 2, 2003. The chapter 7 trustee has referred this case to the United States Trustee, who is reviewing the case to determine whether or not a complaint objecting to the debtor's discharge should be filed.

The United States Trustee has received information from the chapter 7 trustee, as well as through independent investigation, which indicates the debtor may have concealed assets and/or converted assets are the filing of the petition. On this basis, the United States trustee requests additional time to thoroughly review the documentation that has been obtained, to interview potential witnesses, and to conduct his own investigation as to what assets, if any, have been concealed or converted.

Because of the complicated nature of the case, the United States trustee requests an extension to January 30, 2004. The motion will be granted. The last date for the United States trustee to object to the debtor's discharge is extended from June 23, 2003, to January 30, 2004.

11.	02-25882-A-7 ELLA SMITH CCR #3 WAYNE/JOANN CARROLL, VS.	HEARING - MOTION TO ANNUL THE AUTOMATIC STAY NUNC PRO TUNC, OR ALTERNATIVELY FOR RELIEF FROM THE AUTOMATIC STAY 7-2-03 [129]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rules 4001-1 and 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor, the trustee, and any other party in interest to file written opposition at least 14 calendar days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Their defaults are entered and the matter will be resolved without oral argument.

Movants request that the court annul the automatic stay. Movants filed a Notice of Default on May 24, 2002, one day after the filing of the petition. Movants did not receive notice of the case until June 6, 2002.

There is no equity in the property, and the property is not necessary for a reorganization. There clearly is cause for relief from automatic stay pursuant to 11 U.S.C. § 362(d)(2). Movants assert that the court should annul the automatic stay and allow them to proceed under their previously filed Notice of Default for a number of reasons.

First, Movants were not aware of the bankruptcy when they filed the Notice of Default. Second, relief from stay was granted by this court on December 27, 2002, to a lienholder which holds liens senior and junior to movants' lien on the same property. Third, movants are individual investors, and assert that it would be very burdensome to be required to start the foreclosure process over again and run the risk of being required to reinstate the first and second deeds of trust prior to being able to complete the foreclosure of the property under their third deed of trust.

The determination of whether cause exists to grant retroactive relief from stay is a case-by-case analysis, with no particular factors being dispositive. In re National Environmental Waste Corp., 129 F.3d 1052, 1055 (9th Cir. 1997). Among other things, the court may consider whether it would have granted relief had the creditor applied before the act violating the stay, whether the creditor had knowledge of the stay when they violated it, and the equities of the situation, including hardship to the creditor. In re Nat'l Envir. Waste Corp., 129 F3d. at 1056, In re Kissinger, 72 F.3d 107, 109 (9th Cir. 1995) and In re Schwartz,954 F.2d 569, 572 (9th Cir. 1992).

Based on these factors, the court will annul the stay as to movant. The motion will be granted.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

12. 02-27882-A-7 OMAR/MONALISA DIBBA — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
MDV #1
VW CREDIT, INC., VS. — 6-26-03 [39]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the movant, this motion for relief from the automatic stay is deemed brought pursuant to Local Bankruptcy Rules 4001-1 and 9014-1(f)(2) (effective Dec. 23, 2002). Consequently, the movant has waived the time constraints of 11 U.S.C. § 362(e), and the debtor and the trustee are not required to file written opposition to the motion. If either or both of them appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

13. 03-23688-A-7 BRENT TYRRELL — HEARING - MOTION TO PERMIT REDEMPTION OF SECURED EQUIPMENT
DKC #2 — 6-13-03 [38]

Tentative Ruling: The debtor moves to redeem secured equipment pursuant to 11 U.S.C. § 722. The equipment debtor seeks to redeem is a 1993 Caterpillar 51H-C skidder, a 1992 Peterbilt Truck, a 1990 Ravens flatbed trailer and a 1996 Polaris ATV.

Debtor submits evidence that the skidder should be valued at $15,500 and proposes to redeem it for that amount. Debtor tentatively values the Peterbilt truck at $10,000, and the Ravens trailer at $4,000, but submits no evidence as to these values. The truck and trailer were repossessed by Western Bank a few hours before the case was filed, and debtor alleges that they may have been damaged in the process. Debtor states that he will file a statement of values within one week after the vehicles can be examined by the debtor and his appraiser, and that if the vehicles are not worth redeeming he will immediately inform Western Bank's attorney and file a withdrawal of this motion as to either of those items.

Debtor proposes to pay $15,500 for the skidder immediately upon approval. Debtor further proposes to pay the value of the truck, trailer, and Polaris ATV no later than July 15, 2003 or approval of their redemption by the court if such redemption is after July 15, 2003.

Creditor Washington Mutual Bank opposes the motion on the basis that only "personal property intended primarily for personal, family or household use" may be redeemed pursuant to 11 U.S.C. § 722. Creditor cites to Cypher Chiropractic Ctr. v. Runski (In re. Runski), 102 F.3d 744 (4th Cir. 1996), for an interpretation of the code section, concluding that items purchased for a business venture or with a profit motive are not household items. The property that is the subject of this motion clearly is business property, used in and related to debtor's logging business.

Debtor argues that, because the property was abandoned under 11 U.S.C. § 554, the restriction of property to that "intended primarily for personal, family or household use" does not apply. However, 11 U.S.C. § 722 reads: "An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by the lien." In other words, the phrase "or has been abandoned under section 554 of this title" does not describe a second category of redeemable property. There is just one category, "tangible personal property intended primarily for personal, family, or household use." This category of personal property may be redeemed if is either exempt or, if not exempt, it has been abandoned by the estate.

As Collier's explains, "Property held primarily for business purposes cannot be redeemed pursuant to § 722." Collier on Bankruptcy, 15th Ed., § 722.02[1].

Because debtor seeks to redeem property that is held primarily for business purposes, the motion to redeem is denied.

14. 03-21989-A-7 KATHRYN MOORE — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 6-30-03 [60]

Tentative Ruling: On February 24, 2003, the debtor filed a chapter 13 petition. The case was converted to chapter 7 on July 3, 2003. The debtor requested and was ordered to pay the filing fee in installments, beginning with a payment of $46.00 on or before March 26, 2003. Debtor paid the first 3 installment fees. The final installment fee was due on June 24, 2003. It was not paid timely but it was paid on July 7, 2003. The case shall remain pending.